

REMARKS

This amendment is in response to the Examiner's office action dated September 28, 2005.

1. Claims under consideration

Applicants note that there are 8 claims pending in the instant application. The office action summary references claims 1-12 as being rejected, and the double patenting rejection references claims 1-12, however Applicants find no claims entered beyond claim 8. It is assumed that the references to claims 1-12 are a typographical error and response is made where appropriate to claims 1-8 instead of 1-12.

2. New Matter

The Examiner has objected to the amendment filed 06/17/2005 because it introduces new matter into the disclosure, specifically the last two sentences of the deposit paragraph which were amended to read "Unauthorized seed multiplication prohibited. U.S. Protected Variety." (office action dated September 28, 2005, page 2). Applicants respectfully traverse and submit that the amendment is proper. The original deposit paragraph submitted on the filing date of the application states that "Applicant(s) do not waive any infringement of their rights granted under this patent or under the Plant Variety Protection Act (7 USC 2321 et seq.). Therefore as of the filing date of the application reference was made to the Plant Variety Protection Act (7 USC 2321 et seq). The last two sentences as amended by the Applicants are taken from the statutory language at section 97.141 which states that "upon issuance of an application for protection of a variety ... the owner ... may label the variety ... as follows: ... "Unauthorized seed Multiplication Prohibited. U.S. Protected Variety". Therefore, since the added language is directly taken from the referenced statute, Applicants submit that this does not constitute new matter.

35 U.S.C. § 132 states that "no amendment shall introduce new matter into the disclosure of the invention". MPEP 706.03(o) states that "35 U.S.C. § 132 should be employed as a basis for objection to amendments to the abstract, specification, or drawings attempting to add new disclosure to that originally disclosed on filing". The addition of text from the U.S. PVP Act (7 USC 2321) is not further disclosure on the subject matter of the invention, but rather recitation of the PVP law. Therefore, this does not constitute new matter under 35 U.S.C. § 132. Applicants respectfully request reconsideration.

2. Claim Rejections – Double Patenting

The Examiner rejects claims 1-8 as being provisionally rejected under the judicially created doctrine of obviousness-type double patenting over copending Application No. 11/048,492. Applicant respectfully traverses. However, in order to expedite application, Applicants note that this copending application has abandoned through non-payment of the issue fee due February 2, 2006. Applicants respectfully request reconsideration.

CONCLUSION

In conclusion, Applicant submits in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

Please consider this a two month extension of time from December 28, 2005 to February 28, 2006, under the provision of 37 C.F.R. § 1.136(a) and charge Deposit Account No. 16-1852 for the amount of \$450.00.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 16-1852.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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